

**REDACTED VERSION OF
PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO COMPEL**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO

ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO COMPEL**

[FILED UNDER SEAL]

1 Defendants have no legitimate reason to continue hiding [REDACTED]
 2 [REDACTED] from Plaintiffs and the Court. The Court should grant Plaintiffs' Motion to
 3 Compel (Dkt. 789-2).¹

4 **I. GOOD CAUSE EXISTS TO ORDER PRODUCTION OF** [REDACTED]

5 The Non-Settling Defendants concede [REDACTED] until after the end
 6 of fact discovery—indeed after the individual settlements with Intuit, Lucasfilm, and Pixar—and
 7 admit that Plaintiffs diligently alerted the Court to the issue after learning of it. Defendants
 8 suggest no prejudice they would suffer by producing this single document that is readily available
 9 to them, nor could they. Plaintiffs satisfy the “good cause” standard of Rule 16(b)(4).

10 Instead, Defendants assert they are “under no obligation to produce documents created
 11 after December 30, 2011,” citing only to the transcript of the April 18, 2012 Case Management
 12 Conference. (Opp’n at 1.) They are wrong. The discussion to which they cite concerned the
 13 parameters for collecting and searching Electronically Stored Information (“ESI,” such as emails)
 14 from certain relevant custodians, to *find* relevant documents. At no time did Plaintiffs agree that
 15 Defendants could withhold a document they know to be relevant simply because the document
 16 was created after December 30, 2011. To the contrary, Plaintiffs made clear that a date cutoff for
 17 ESI *collection* could not be used as a means to withhold relevant evidence of which Defendants
 18 are already aware. *See, e.g.*, Dec. 4, 2011 J. CMC Statement, at 4 n.2 (Dkt. 115) (“In any case,
 19 Defendants should not withhold responsive documents they find based on a time period cut-off.”).

20 **II.** [REDACTED]

21
 22 Defendants attempt to [REDACTED] (Opp’n at 4-5). But Plaintiffs and the
 23 Court cannot assess these arguments without reviewing it, as Defendants’ own cases confirm.
 24 (*Id.* at 5 n.6: “[REDACTED] [REDACTED].”). [REDACTED] should be produced, and

25
 26 ¹ Plaintiffs have filed this brief under seal pursuant to the Court’s March 24, 2014 Order (Dkt.
 27 768 at 2). As explained in the accompanying Administrative Motion to Unseal, Plaintiffs
 28 respectfully request that the Court revisit its Order and file all associated briefing and exhibits in
 the public record. This issue should not be kept from the Class and the public.

1 then Plaintiffs (and ultimately the Court) may make an informed decision as to [REDACTED].

2 Similarly, the Court and Plaintiffs cannot evaluate the relevance or admissibility of the
3 document without seeing it. According to Defendants, [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]” (Opp’n at 4.) However, this argument assumes that [REDACTED]

7 [REDACTED]. But if Plaintiffs [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED].

12 For instance, [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED].

21 In addition, [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

1 [REDACTED]

2 [REDACTED].

3 Perhaps Defendants ignore the possibility of [REDACTED]

4 [REDACTED]. They may be right. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED].²

14 Finally, Defendants unfairly assert that “Plaintiffs have made no showing that [REDACTED]

15 [REDACTED]” (Opp’n at 5.) But that showing could depend in part

16 on [REDACTED], which Defendants refuse to disclose. Further, as Defendants know,

17 Plaintiffs’ knowledge of [REDACTED] derives from

18 settlement communications. Given that Defendants have put these at issue, Plaintiffs’ counsel

19 requested permission to disclose proof that [REDACTED]

20 [REDACTED]. Counsel for the relevant Defendant(s) withheld that permission.

21 **III. CONCLUSION**

22 The Court should grant Plaintiffs’ Motion and order Defendants to produce [REDACTED].

23

24

25

26 ² See generally [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 Dated: September 19, 2014

Respectfully submitted,

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3
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